STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WILLIE RAY PITTMAN, JR.,

Defendant-Appellee.

UNPUBLISHED
March 3, 2000

No. 219631
Wayne Circuit Court
LC No. 99-002053

Before: Cavanagh, P.J., and White and Talbot, JJ.

PER CURIAM.

The prosecutor appeals as of right the trial court's order suppressing evidence and dismissing the charge of carrying a concealed weapon. MCL 750.227; MSA 28.424. We reverse and remand.

Michigan State trooper Walter Crider testified that on February 26, 1999, at approximately 2:00 a.m., he stopped defendant's vehicle for traveling twenty miles per hour over the speed limit. He approached defendant's vehicle and asked defendant for his driver's license, registration, and proof of insurance. Crider testified that defendant's hands were trembling, his speech was stammered, and he had a nervous demeanor. As defendant reached for his vehicle registration and proof of insurance in the glove box, his jacket rose above his waist and Crider noticed what he believed to be a holster attached to defendant's belt. When defendant responded that he did not have a weapon, Crider asked defendant to exit the vehicle. Crider testified that he then conducted a patdown search for weapons based on defendant's nervous demeanor and what he believed to be a holster attached to defendant's waist. During the pat-down, Crider discovered that the holster actually contained a multi-purpose tool, but felt an object in defendant's right front pocket that felt like and turned out to be a small caliber gun.

At the conclusion of the evidentiary hearing, the trial court granted defendant's motion to suppress the gun, rejecting the prosecutor's position that Crider had reasonable suspicion to conduct the patdown search.[1] Without questioning the honesty or basic accuracy of Crider's testimony, the trial court determined that defendant's nervousness, even when coupled with the presence of the holster, did not amount to a reasonable suspicion of criminal activity.

On appeal, the prosecutor argues that the trial court erred in granting defendant's motion to suppress the gun on the ground that Crider did not have a reasonable suspicion of criminal activity to justify the limited patdown search for weapons. We agree.

This Court reviews for clear error a trial court's factual findings in deciding a motion to suppress evidence. *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999). A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *People v Howard*, 233 Mich App 52, 54; 595 NW2d 497 (1998). Whether a police officer's suspicion of criminal activity was reasonable is a question of law, that we review de novo. *People v Bloxson*, 205 Mich App 236, 245; 517 NW2d 563 (1994); see also *Matthews v BCBSM*, 456 Mich 365, 377; 557 NW2d 311 (1998). Thus, "[a]lthough we do not disturb a trial court's factual findings absent clear error, we afford a trial court's application of constitutional standards no such deference." *Howard*, *supra* at 52; see also *People v LoCicero (After Remand)*, 453 Mich 496, 500-501; 556 NW2d 498 (1996). Because the prosecutor challenges the trial court's determination regarding the existence of reasonable suspicion and not its factual findings, our review is de novo.

A police officer who makes a valid stop[2] may perform a limited patdown search for weapons where the officer has reasonable suspicion of criminal activity and a reasonable fear for the safety of himself and others. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v McCrady*, 213 Mich 474, 482; 540 NW2d 718 (1995); see also *People v Champion*, 452 Mich 92, 99; 549 NW2d 849 (1996). The officer must be able to articulate specific facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion. *People v Muro*, 197 Mich App 745, 747; 496 NW2d 401 (1993). This is an objective standard that involves a determination whether a reasonably prudent person in the particular circumstances would be warranted in the belief that his safety or the safety of others was in danger, and must be evaluated in light of the totality of the circumstances confronting the officer. *Id.;* see also *People v Taylor*, 214 Mich App 167, 169; 542 NW2d 322 (1995). In analyzing the circumstances, due weight must be given "to the specific reasonable inferences which [the officer] is entitled to draw from the facts in light of his experience." *LoCicero*, *supra* at 502, quoting *Terry*, *supra* at 27.

After reviewing the record in this matter, we conclude that the information available to Crider at the time of the patdown was sufficient to provide him with a reasonable suspicion that defendant was carrying a weapon and with a reasonable fear for the safety of himself and that of his partner. While this Court has held that nervousness alone is insufficient to create a reasonable suspicion, *Bloxson*, *supra* at 247, we disagree with the trial court's conclusion that defendant's nervous demeanor when coupled with the presence of the holster did not amount to a reasonable suspicion. Crider testified that the holster was approximately four inches in length and could have possibly contained a weapon. According to Crider, the nylon holster resembled the nylon "Uncle Mike" holster he owned and "very much so" gave him the impression that defendant was probably holding a dangerous weapon. Crider testified further that he conducted the weapons patdown for his safety and the safety of his partner only after he observed a holster that might contain a weapon, defendant's nervous demeanor, and had received defendant's denial that he had a gun. In our view, these facts provided the necessary

particularized suspicion necessary to justify the frisk for weapons. Under the totality of the circumstances, Crider could have reasonably believed both that defendant was carrying a concealed weapon in violation of MCL 750.227; MSA 28.424 and that his safety or the safety of his partner was in danger. See *Taylor*, *supra* at 170; *People v Lillis*, 64 Mich App 64, 68, 72-73; 235 NW2d 65 (1972) (frisk for weapons was supported by reasonable suspicion where the officer observed a bulge in the defendant's waist area and had reason to believe, based on observation and prior experience, that the bulge indicated that the defendant might be armed); see also *People v Harmelin*, 176 Mich App 524, 532; 440 NW2d 75 (1989) (patdown was justified where the defendant was stopped "in a high crime area during early morning hours, was admittedly carrying a pistol in an ankle holster, appeared to be extremely nervous, and had a bulge in one of his coat pockets which led the arresting officer to believe that defendant could have been carrying a concealed weapon"). Accordingly, we hold that the trial court erred in granting defendant's motion to suppress evidence of the gun and dismissing the case.

Reversed and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Helene N. White
/s/ Michael J. Talbot

[1] While the prosecution also advanced the theory that defendant consented to the patdown, it does not contest the court's ruling on that theory on appeal.

[2] Neither the prosecutor nor the defense contest the validity of the initial stop of defendant's vehicle.